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ARIZONA CORPORATION COMMISSION
OFFICE OF COMMISSIONER LEA MÁRQUEZ PETERSON

December 18, 2019

Docket Control
Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007

Re: E-01345A-19-0003: In the matter of the rate review and examination of the books and records of Arizona Public Service Company and its affiliates, subsidiaries and Pinnacle West Corporation.

My Fellow Commissioners,

On December 11, 2019, the Arizona Corporation Commission (Commission) held an Open Meeting where the Commissioners heard from newly-appointed Arizona Public Service Company (APS) CEO Jeff Guldner and had the opportunity to question executives on recent company issues. That morning, prior to the beginning of the meeting, APS contacted commissioners' offices to inform them that the Attorney General was investigating APS regarding the rate comparison tool. We were specifically told by company representatives that the investigation was "confidential," and that this confidentiality meant that commissioners would be unable to address the investigation at the Open Meeting.

Later that day, these same concerns were again reiterated to my office and another commissioner by our own Chief Counsel. We were told that APS had also disclosed the investigation to her and that we, as commissioners of the Arizona Corporation Commission, could NOT talk about the investigation during the Open Meeting. According to Chief Counsel, the prohibition against disclosure was written in statute and bringing up the investigation during Open Meeting would violate Arizona law.

Following our Open Meeting, I saw that on Friday, December 13, APS had voluntarily confirmed the existence of an Attorney General investigation to the news media.¹ I was curious to know what circumstances had changed since the admonition from our Chief Counsel and APS on December 11 regarding the statute which prohibited commissioners from asking about the investigation during the Open Meeting. I then found and reviewed the related Statute regarding confidentiality in consumer fraud investigations involving the Attorney General. Arizona Revised Statute §44-1525 states:

All information or evidence provided to the attorney general shall be confidential and shall not be made public unless in the judgment of the attorney general the ends of justice and the public interest will be served by the publication thereof, provided that the names of the interested parties shall not be made public.

¹ Joe Dana, *AZ Attorney General contacts APS about price tool debacle*, 12 NEWS (Dec. 13, 2019), <https://www.12news.com/article/news/local/valley/az-attorney-general-contacts-aps-about-price-tool-debacle/75-2cb766a3-57a1-48a0-8eab-308fc1df8301>.



My interpretation of this statute is that confidentiality applies only to the Attorney General's office, not to any other person or entity. I can think of only two explanations, then, for the actions of APS in advising commissioners not to discuss the investigation at the Open Meeting. First, the company truly believed that the above law applied to them and was required to maintain confidentiality but then voluntarily broke that law by notifying the Commission and later disclosing the existence of an investigation to the media.

The second, and even more concerning alternative, is that the company knew that there was no requirement to maintain confidentiality—for either APS or the Commission—and instead chose to actively deceive commissioners by misrepresenting such a standard in an effort to avoid public scrutiny.

On December 11, I asked the question of APS in my opening statement: "*What else is there?*" Under Arizona Revised Statutes §44-1525, you could have answered my question. But, you did not.

The investigation should have been disclosed. Consumers should have had an opportunity to know about this and commissioners should have had the chance to press the company when the CEO was sitting before us in the meeting. If confidentiality did not apply to APS on Friday, December 13^c when the company spoke openly to the media, then why did APS not disclose the investigation during the Commission's meeting on Wednesday, December 11?

In an effort to further understand the nature and scope of the issues relating to the Attorney General's look into the company and to ensure we are working to protect consumers in Arizona, I am asking for the following actions to be taken:

1. For APS to explain, in the docket no later than January 3, 2020, why they felt justified in communicating to commissioners that discussion of the Attorney General investigation was prohibited.
2. For APS to disclose to Commission Staff no later than January 3, 2020, all statements, reports, data, information, records, accounts, and papers provided to the Attorney General's office under ARS 44-1524 relating to this, and any other ongoing state investigation, and for APS to also disclose the associated requests for these items from the Attorney General.
3. That the Commission forward all APS complaints it has on file from 2017 to November 2019 to the Attorney General's office for review. According to Commissioner Sandra Kennedy in her letter to the docket dated December 13, 2019, this totals approximately 8,000 pages of complaints. I would ask that Staff forward these complaints and allow the Attorney General, under its own, legitimate consumer confidentiality protections, to view the personally identifiable information of each of the complainants to know, unhindered, the full impact of APS's conduct and identify the potential victims and affected customers relevant to its investigation of APS consumer protection issues.

It is important to me that Arizona consumers have their voices heard when confronted with issues while dealing with our regulated utilities. I am therefore encouraging all customers in the APS service area who feel they have been misled by the company to contact the Attorney General's office as soon as possible and fill out a confidential online consumer fraud complaint by visiting www.azag.gov/complaints/consumer.

In this vein, I have also reached out to consumer advocacy groups—the Residential Utility Consumers Office, Wildfire, Arizona Public Interest Research Group Education Fund, and AARP—to ask for their assistance in educating APS customers by putting the above link to the Attorney General's online portal on their respective websites.



We welcome similar efforts by any other organization who has contact with APS customers to ensure we raise awareness of this investigation to the highest level possible. I would likewise ask our Executive Director to ensure the above link and related online filing instructions are added to the Arizona Corporation Commission's homepage to direct concerned customers to the Attorney General's online portal.

Unfortunately, this unjustified gag order of the Commission is just another example in a long line of trust eroding incidents created by APS that only serves to further raise skepticism and mistrust between the company and its customers. I cannot speak for all commissioners, but I know that personally, I am insulted and angry. I feel as though APS took action to deliberately mislead the Commission in an effort to avoid the public embarrassment of having us directly question the CEO on this investigation in a public forum.

I look forward to receiving responses from the company and seeing action taken by our Staff. I am encouraged that any independent investigation being considered by this Commission into the circumstances surrounding the APS rate comparison tool will be paired with a similar investigation by the Attorney General. I also anticipate addressing these issues further in upcoming Open Meetings.

Thank you.

Sincerely,

A handwritten signature in blue ink that reads "Lea Márquez Peterson".

Lea Márquez Peterson
Commissioner

